The carrying of arms and using thereof or attempted use thereof, either in the committing of a crime or in the attempted evasion of arrest ought to constitute an offence distinct from the offence of merely carrying arms and ought to form a distinct charge upon which the verdict of the jury or assessors should be obtained.

With all due deference to the Court of Appeal, whose *dictum* in the case cited is only *obiter* and before which the points I mention were not raised, I feel obliged to sentence the accused merely in respect of the offence of carrying arms of which they have been found guilty, without proceeding to find further facts as to the use of arms or the existence or non-existence of a common intention to use arms.

I sentence each accused to a term of ten years' rigorous imprisonment in respect of the offence of carrying arms contrary to section 3 (1) of the Public Order and Safety Proclamation.

The sentence of the first accused will commence to run when he has served one year of his previous sentences.

Sentences Passed Accordingly.

STRAITS SETTLEMENTS REPORTS.

MOHAMED ABDUL CADER v. FREDERICK SMITH.

[Orig. Civil Juris. (Worley, J.) December 12, 1941]

Civil Law Ordinance, Section 7 as amended by the Civil Law (Amendment) Ordinance 1940 — Negligence — Damages for loss of expectation of life — Factors to be taken into consideration in assessing quantum of damages to be awarded.

This was a claim for damages for loss of expectation of life and for funeral expenses brought by the administrator of the estate of one Nee Aya Abdul Karim (deceased) under the provisions of Section 7 of the Civil Law Ordinance as amended by the Civil Law (Amendment) Ordinance 1940. It appeared that the deceased was a Tamil Mohamedan aged 26 and that he owned a small shop at 71-6 Woodlands Road, a rural district of Singapore, where he carried on business in piece-goods, provisions and general merchandise. On the 13th of October 1940 when cycling in Woodlands Road he was knocked down by the defendant's car and was severely injured. When the defendant found him in the roadside ditch immediately afterwards he was either dead or unconscious, and if the latter, he died shortly after without regaining consciousness. The defendant admitted negligence and liability in damages and the only question for decision was as to the quantum of the damages.

Held, applying the principles laid down in the English case of **Benham v. Gambling,** that $1,500/- was a proper sum to award in this case.

Cases referred to:—

(1) *Flint v. Lovell* (1935) 1 K.B. 354.

(2) *Rose v. Ford* (1937) A.C. 826.

(3) *Benham v. Gambling* (1941) A.C. 162.

(4) *Yee Kong v. Teh Seng* (1941) 10 M.L.J. 58.

ACTION FOR DAMAGES.

K. Tangamani for the plaintiff.

C. C. Tan for the defendant.

Worley, J.: —This is a claim for damages brought by the administrator of the estate of a deceased person under the provisions of section 7 of the Civil Law Ordinance as amended by the Civil Law (Amendment) Ordinance 1940. Damages are claimed for the injury which has come to be known as loss of expectation of life. The deceased person left no dependants so there is no claim under section 8 of the Ordinance. There is a claim for $150 for funeral expenses.

Section 7 of the Civil Law Ordinance as amended by Ordinance No. 30 of 1940 was clearly intended to reproduce the statute law of England as enacted in section 1 of the Law Reform (Miscellaneous Provisions) Act, 1934; section 7 (1) and (2) (c) of the Ordinance correspond to section 1 (1) and (2) (c) of the Act. Decisions on these provisions of the English Act will therefore furnish a guide to the interpretation of the Ordinance, and I have also been referred to a decision of Howes J. on a corresponding section in the Civil Law Enactment of the Federated Malay States.

In the present case, counsel for the defendant accepted as law in the Colony the principles laid down by the Court of Appeal and the House of Lords in the well known cases of *Flint v. Lovell*[1] and *Rose v. Ford*[2]. The former case decided that in a claim for damages by a living person who has met with an accident through the negligence of the defendant, the Court in assessing damages is entitled to take into consideration as one of the elements of damage the

fact that the plaintiff's normal expectation of life had been materially shortened. In the latter case the House of Lords approved *Flint v. Lovell* and further held that in cases where the injured person dies the right to such damages which vested in the deceased in life passes on his death to his legal personal representative under section 1 of the Act of 1934.

Furthermore, the defendant admits negligence and liability in damages, the facts are simple and are not in dispute, so that the only question I have to decide is as to the quantum.

The deceased was a Tamil Mohammedan aged about 28. He owned a small shop at 71–6 Woodlands Road, a rural district of Singapore, where he carried on business in piece-goods, provisions and general merchandise. He was born in India and was brought to Malaya in 1929 by his brother, the present administrator, who set him up in business in Seremban. That business failed in the depression of 1931 and for two years he was supported by his brother. Subsequently he assisted his brother who was then a contractor. In 1935 the deceased became a broker for food supplied to messes in the Naval Base Singapore and in 1936 he paid a visit to India. In 1937 he returned and set up in business on his own at Woodlands Road. He sold that business and another one and then opened the shop at No. 71–6. At the time of his death, he employed one salesman and a cook and, according to the administrator's evidence which was not challenged, made a net profit from his business of about $120/- a month. He had the notion of buying the premises he occupied and putting up his own shop. The deceased was not married but was contemplating marriage. He regularly sent money to his sisters in India and from time to time supported his brother in periods of unemployment.

I have set out these details to show the station in which the deceased was placed and to show that like other men he had his ups and downs, his burdens and his ambitions.

The evidence is that he had no disease and was in robust health, that he was a very happy man looking forward to a predominantly happy life.

On the 13th of October last year when cycling on the Woodlands Road he was knocked down by the defendant's car and severely injured. When the defendant found him in the roadside ditch immediately afterwards he was either dead or unconscious and, if the latter, died shortly afterwards without regaining consciousness. I conclude from this that the deceased was either killed outright or was rendered immediately unconscious by the injuries he received. From this it follows, on the authority of the House of Lords in *Benham v. Gambling*[3] that there can be no claim for pain and suffering and the only question, apart from funeral expenses, is that of damages arising from the diminution of the deceased's expectation of life.

The principles upon which the Courts in England are to act in assessing such damages have now been settled by the House of Lords in this last cited case, and the earlier reported cases must now be considered as authoritative only so far as they can be brought into accord with that case. Nor must it be overlooked that each case ultimately depends on its own facts.

In the present case both counsel have asked me to adopt as the measure of damages the criterion set out in the already famous speech of Lord Simon L.C., namely that the thing to be valued is the prospect of a predominantly happy life. I accept that test and, however difficult it may be to answer the question, What is happiness worth? in terms of money, I must do my best to contribute to its solution.

The function of a judge sitting without a jury is to try to arrive at a reasoned estimate of the damages to be awarded and I therefore propose to examine the speech of the Lord Chancellor, with which the other noble lords agreed, in order to see what things ought to be taken into account or to be omitted in framing such an estimate.

Firstly, Lord Simon lays down that damages should not be calculated solely, or even mainly, on the basis of the length of life that is lost. "It is of no assistance", he says, "to know how many years have been lost, unless one knows how to put a value on the years". Nevertheless in some cases, the age of the individual may be a relevant factor. In extreme old age the brevity of what life may be left may be relevant. An infant, as Lord Wright said, is far more exposed to certain dangers and diseases than an adult and may not live to maturity. But when we are considering the traveller on the long plains of youth and middle age it is of less importance to measure the length of the road which lay before him when death struck him down.

Secondly, it must not be assumed that all human life is continuously an enjoyable thing. "The ups and

downs of life, its pains and sorrows as well its joys and pleasures—all that makes up 'life's fitful fever'—have to be allowed for in the estimate". Therefore "it is necessary for the Court to be satisfied that the circumstances of the individual life were calculated to lead on balance to a positive measure of happiness of which the victim has been deprived by the defendant's negligence. If the character or habits of the individual were calculated to lead him to a future of unhappiness or despondency that would be a circumstance justifying a smaller award."

Thirdly, the deceased's capacity or ability to appreciate his happiness is not the test. "The test is not subjective and the right sum to award depends on an objective estimate of what kind of future on earth the victim might have enjoyed whether he had justly estimated that future or not".

Fourthly, the damages are not in respect of loss of future pecuniary prospects. "No regard must be had to financial losses or gains during the period of which the victim has been deprived".

Fifthly, there is no reason why the proper sum to be awarded should be greater because the social position or prospects of worldly possessions are greater in one case than another. "The degree of happiness to be attained by a human being does not depend on wealth or status".

Finally, it must be borne in mind that the compensation is not being given to the person who was injured for he is dead. All these considerations lead to the conclusion that in assessing damages under this head whether in the case of a child or an adult, very moderate figures should be chosen.

On balance then of such factors in this young man's life as are known to me, I have to estimate the measure of happiness he might have looked for in life. He had passed the risks and uncertainties of childhood and had attained in some degree to an established character and a fair position in life. He was in good health and making a comfortable living in a country where ordinary people may still reasonably expect to live in security. Nevertheless the chances of war and the risks—one may almost say the probabilities—of trade depressions must be taken into account as factors which might decrease his future happiness. I think the award ought not to be increased because of his declared intention to get married—not because I reject the view that the sum of human experience shews that marriage does on the whole bring happiness—but because I regard the hope of contracting a happy marriage as part of the normal prospects of the average young man.

His partial support of relatives must be considered a slightly depreciatory factor. He probably performed this willingly as a family duty and in good times would feel it no burden but in bad times this dependence of relatives would add to his anxieties.

There are no other special circumstances which call for comment and I have now to put a money value upon this estimate of the deceased's unreaped harvest of happiness. There is not much help to be had from the cases which were decided before the decision in *Benham v. Gambling*. The £4,000 awarded in *Flint v. Lovell* to a man of 70 years of age in good health and good condition is obviously excessive by the standards now to be adopted. In *Rose v. Ford* the House of Lords had not to decide how the damages were to be calculated for there was no quarrel with the amount of £1,000 fixed by the Court of Appeal. That was a case of a strong healthy girl aged 23 apparently in a settled and comfortable station in life. In *Benham v. Gambling*, the House of Lords considered that the proper figure would be £200 in the case of an infant aged two and a half years, who was a normal healthy child, living in a rural English village with a father in steady employment. Their Lordships thought that even this amount would be excessive if it were not that the circumstances of the infant were "most favourable".

In *Yee Kong v. Teh Seng*[4] Howes J. awarded $1,000 for loss of expectation of life in the case of a Chinese woman mining labourer about 25 years of age. In that case the medical evidence was that the expectation of life of a woman mining cooly in Malaya is 50 years but the deceased suffered from an enlarged spleen and had, according to medical opinion, only about 20 years in front of her. She had a husband and two children and had been in fairly continuous employment since her arrival from China three years earlier. Her earnings were about $15 a month and she used them to help support her children. Her employment was precarious and accompanied by a certain amount of risk. There was also a probability of risk of death or disability from subsequent child births. This award was made before the decision of the House of Lords in *Benham v. Gambling* but the factors considered by Howes J. appear generally to conform with the principles of that decision. The learned Judge does not determine the amount

mathematically on the basis of the number of lost years. He expressly rejects a calculation based on loss of earning capacity or upon the social position of the person whose life is shortened and he recalls Lord Atkin's substantial distinction between damages awarded to the living because life is shortened and damages to a third person because of some other person's death. He reviews the circumstances of the deceased's life so far as they were known to him with the evident object of estimating the kind of life she might have expected to live in the future.

I think therefore that although the learned Judge did not in terms refer to the "prospect of a predominantly happy life" as the thing to be valued, he was in fact making as best he could an estimate in money of that prospect and that the amount he thought proper to award in the circumstances of that case provides a useful standard of comparison.

In the circumstances of the present case I should say that the deceased had a considerably better prospect of a predominantly happy life than the unfortunate Chinese woman labourer. So taking all these matters into consideration and using the best judgment I can in this difficult matter, I think that $1,500 would be a proper sum to award.

There remains the question of funeral expenses. The plaintiff's evidence is rather vague and is not supported by vouchers but it has not been seriously challenged except as to an item of $60.00 given to feeding the poor. The plaintiff says that this is a pious custom among Mohammedans. That may be so, but payments of this kind are generally made with the intention of getting a benefit for the soul of the departed and are not payments requisite to secure a decent burial. I do not think that the defendant should be expected to pay this item and I allow funeral expenses at $90 only.

I therefore give judgment for the plaintiff for $1,590 and costs.

Order Accordingly.

TAN CHENG LAI v. REX.

[App. Crim. Juris. (McElwaine, C.J.) October 3, 1941]

Traffic Regulations 1939 Regulations 73 and 81 —Penalty for second or subsequent offence—Previous conviction under Section 10 (1) Traction Engines and Motor Cars Ordinance (Cap. 214) cannot be regarded as a first conviction under the Traffic Regulations— Traction Engines and Motor Cars Ordinance, Section 6.

This was an appeal against sentence. The appellant was convicted under Regulation 73 of the Traffic Regulations, 1939 for driving a vehicle otherwise than in a careful manner and with due regard for the safety of others. It appeared that the appellant had previously been convicted under Section 10(1) of the Traction Engines and Motor Cars Ordinance. The learned Magistrate considered that the latter conviction might be reasonably held to be a first conviction under the Traffic Regulations, 1939 and he imposed a fine of $50/- which was half the maximum fine for a second or subsequent offence against the Regulations. The maximum fine for a first offence is $25/-.

Held, that in order to make a person liable for the increased penalty for a second or subsequent offence under Regulation 81 of the Traffic Regulations 1939, he must have been previously convicted under the Regulations and that the Magistrate was wrong in regarding a previous conviction under Section 10(1) of the Traction Engines and Motor Cars Ordinance as a first conviction under the Traffic Regulations, 1939.

MAGISTRATE'S APPEAL.

P. C. Nathan for the appellant.

C. H. Butterfield for the respondent.

McElwaine, C.J. :—This is an appeal against sentence. I reserved my decision to consider whether the fine imposed was one authorised by law.

The conviction was under Regulation 73 of the Traffic Regulations, 1939, "No vehicle shall be driven upon a public road otherwise than in a careful manner and with due regard for the safety of others."

Regulation 81 provides that any person who contravenes any of these regulations shall be guilty of an offence and shall be liable in respect of a first offence to a fine not exceeding $25.

On 28th July 1939 the appellant was convicted under section 10 (1) of the Traction Engines and Motor Cars Ordinance. The learned Magistrate considered that this latter conviction might be reasonably held to be a first conviction under the Traffic Regulations, 1939, and he imposed a fine of $50 which was half the maximum fine for a second offence against the Regulations.

The word 'offence' in the phrase 'first offence' has the same meaning as it has when used a few words earlier in the same Regulation and it refers to a contravention of the Regulations.

The learned Magistrate took the view that a person who drives "negligently or at a speed or in